REMARKS

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-6, 10-19, 23-26, and 49 remain pending in the present application and claims 27-44 remain withdrawn from consideration. Claims 1 and 3 are amended herein. These amendments are specifically described hereinafter. It is believed that the foregoing amendments add no new matter to the present application.

2. Indication of Allowable Subject Matter

Applicants greatly appreciate the Examiner's statement in the Office Action in which claims 15-19 and 23-25 have been indicated as allowable.

3. Response To Claim Objections

Claim 3 has been objected to "because of the following informalities: the claim is missing the percentage symbol (%)." *Office Action* at 2. Applicants have complied with Examiner's request and have amended claim 3 accordingly. Thus, Applicants respectfully request that this objection be withdrawn.

3. Response To Claim Rejections Under 35 U.S.C. Section 103

(1) Claims 1, 2, 4-6, 10-14, and 26 have been rejected under 35 U.S.C. Section 103(a) as purportedly being unpatentable over *Forsten, et al.* (U.S. Patent No. 5,578,368) in view of *Lin, et al.* (U.S. Patent No. 5,691,036). The combination of *Forsten et al.* with *Lin et al.* fails to establish a *prima facie* case of obviousness.

(a) There is no motivation to combine *Forsten et al.* and *Lin et al.*

There is no suggestion or motivation in the references to combine them. In order to establish the *prima facie* case of obviousness, the Examiner must establish a suggestion or motivation either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art to modify the reference or combine reference teachings in order to result in the claimed invention. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). In the

present case, the *prima facie* case of obviousness has not been established because there is no suggestion or motivation in the art to combine *Forsten et al.* with *Lin et al.*

The Board of Patent Appeals and Interferences' rejection of a need for any specific hint or suggestion in the art to combine references was recently held to be legal error. *In re Lee*, 277 F.3d 1338 (Fed. Cir. 2002). The Office "cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies." *Id.* at 1345. Further, the court stated that the specific teaching that would have suggested the claimed combination must be present, and subjective belief could not be relied on.

Forsten et al. disclose "a fire resistant material that may be used in items such as sleeping bags, comforters, wearing apparel, upholstered furniture, or mattress tops. In particular, the present invention relates to a fire resistant material comprising a fiberfill batt and a aramid fiber contacting the fiberfill batt." The aramid fiber layer may be needle-punched, hydroentangled, or laminated to the fiberfill batt. *Forsten et al.* at col. 1, lines 11-16. *Lin et al.*, however, disclose "A cushioning material... having at least two layers of unwoven, temperature-resistant staple fibers and layers of reinforcing scrim between the unwoven layers, wherein the entire structure is needlepunched for integrity...." *Lin et al.* at Abstract.

Forsten et al. is simply directed to a fire-resistant material, where the fire-resistant material includes two layers, *i.e.*, a layer of fire-resistant aramid fiber and a fiberfill batt. The *Lin et al.* reference is directed to a *temperature*-resistant material, which is different than a *fire*-resistant material, and has different characteristics. *Lin et al.* state, "In uses requiring moderate temperature resistance, batts in the cushioning material of this invention can be made from fibers... such as polyamides polyesters, polyacrylonitriles, and the like." *Lin et al.* at col. 2, lines 29-33. These fibers are not fire-resistant, as are the fibers of *Forsten et al.* For example, a temperature-resistant material is not necessarily flame-retardant, as a fire-resistant material is expected to be.

Further, *Forsten et al.* disclose no scrim, whereas *Lin et al.* disclose a scrim sandwiched between two temperature-resistant fibrous layers. While both of these references are generally directed to fibrous materials, there would be no motivation in the art to combine them because of the distinct differences in the materials disclosed in the two references. They are directed to completely different areas of technology within the fibrous material art. Nothing in *Forsten et al.*

suggests modifying their material by adding the scrim of *Lin et al.*, or by downgrading its fibers from fire-resistant fibers to temperature-resistant fibers.

Because the Office has improperly combined references, no *prima facie* case of obviousness has been established, and the rejection of claims 1, 2, 4-6, 10-14 and 26 should be withdrawn.

(b) The combination of *Forsten et al* . and *Lin et al.* does not render obvious the present claimed invention

It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features of the claims at issue. *See, e.g., In re Dow Chem.*, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988) and *In re Keller*, 208 USPQ 871, 881 (CCPA 1981).

Even if the *Forsten et al.* and *Lin et al.* references are combined, the combination does not render obvious the present independent claim 1.

Independent claim 1, as amended, recites the following:

> 1. A fire-blocking fabric consisting of:
> a nonwoven scrim of flame-resistant fibers; and
> a plurality of flame resistant fibers entangled through the nonwoven scrim on only one side of the scrim via at least one of the following: needlepunching, hydroentanglement, and chemical bonding.

Independent claim 1 is allowable for at least the reason that the combination of *Forsten et al.* in view of *Lin et al.* does not disclose, teach, or suggest the features that are highlighted in claim 1 above. More specifically, *Forsten et al.* fail to disclose either features of a "fire-blocking fabric" or "flame-resistant fibers entangled through the nonwoven scrim", as claimed in claim 1. The fiberfill batt disclosed by *Forsten et al.* is not flame resistant, as are the fibers of the present claim 1. Instead, *Forsten et al.* disclose synthetic fibers such as polyester fiberfill, polyolefin fiber, rayon or nylon, or natural fibers such as wool, cotton, straw, etc. *See Forsten et al.* at col. 2, lines 20-45. These fibers are not the "flame resistant fibers" of claim 1.

Additionally, Forsten et al. state that "all of the embodiments of the present invention, the fiberfill batt may be slickened with a slickening agent, such as silicone." *Forsten et al.* at col. 2, lines 40-45. Such a slickening agent is flammable and if added to the fibers of claim 1, the fabric

of claim 1 would not work for its intended purpose, *i.e.*, be fire-blocking. Because the material of *Forsten et al.* includes synthetic or natural fibers that are not flame resistant fibers, and because the fibers of *Forsten et al.* may be slickened with silicone (which is flammable), the material of *Forsten et al.* is not a "fire-blocking fabric" as claimed in claim 1.

As noted previously, there is no suggestion or motivation to combine *Lin et al.* with *Forsten et al.* If, however, the references are combined, they nevertheless do not teach or suggest the method of the present invention. For example, *Lin et al.* do not cure the above-deficiencies of *Forsten et al.* In particular, *Lin et al.* do not teach or suggest the features of a "fire-blocking fabric" or "flame-resistant fibers entangled through the nonwoven scrim", as claimed in claim 1 and deficient in *Forsten et al.* Flame-resistant fibers are not required in the material of *Lin et al.*, which states, "In uses requiring only moderate temperature resistance, batts in the cushioning material of this invention can be made from fibers of other materials, such as ... polyesters, ... and the like." Col. 2, lines 29-33. By including fibers that are potentially flammable, *Lin et al.* do not teach a "fire-blocking fabric," as claimed in claim 1. As noted previously, moderate *temperature* resistance is not the same as *flame* resistance in fibers.

Additionally, the material of *Lin et al.* "is made by assembling layers of unembossed fibrous batts, with alternating layers of scrim, needle punching the layers together, and embossing a pattern on one outer surface." Col. 3, lines 60-64. The fire-blocking fabric of claim 1, however, consists of only two elements, the nonwoven scrim and the temperature resistant fibers.

Consequently, the combination of *Forsten et al.* in view of *Lin et al.* does not render claim 1 obvious, and the rejection should be withdrawn.

Because independent claim 1 is allowable over the prior art of record, its dependent claims 2, 4-6, and 10-14 are also allowable as a matter of law, for at least the reason that these dependent claims contain all features/elements of their respective independent claim 1. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Thus, Applicant traverses rejection of the dependent claims 2, 4-6, and 10-14 and respectfully requests that the rejections be withdrawn as well.

Additionally, the combination of *Forsten et al.* and *Lin et al.* does not render obvious the present independent claim 26. Independent claim 26 also recites the features of a "fire-blocking fabric" and "flame-resistant fibers ... entangled ... through ... the nonwoven scrim." For at least

the reasons cited above, the combination of *Forsten et al.* and *Lin et al.* does not teach or suggest these features. Applicants respectfully request that the rejection of this claim be withdrawn as well.

(2) Claim 49 has been rejected under 35 U.S.C. Section 103(a) as purportedly being unpatentable over *Forsten et al.* in view of *Lin et al.* as applied to claims 1 and 26, and further in view of *Ilg et al.* (U.S. Patent No. 5,560,990) and *Behnke et al.* (U.S. 4,120,914). Specifically, the Office asserts that "*Forsten et al.* and *Lin et al.* disclose the claimed invention except for the teaching of the scrim comprising 50% melamine fibers, and approximately 25% p-aramid fibers and 25% m-aramid fibers." *Office Action* at 5. Applicants respectfully disagree.

Claim 49 recites the features of a "fire-blocking fabric" and "flame-resistant fibers ... entangled ... through ... the nonwoven scrim." As noted above, the combination of *Forsten et al.* and *Lin et al.* does not teach or suggest these features. The application of *Ilg et al.* and *Behnke et al.* do not cure these deficiencies. Applicants respectfully request that the rejection of claim 49 be withdrawn as well.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-6, 10-19, 23-26, and 49 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephone conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

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